

REMARKS

This Rule 53(b) application is entered in response to the final Office Action mailed December 2, 2003 in parent application serial no. 09/799,937, filed March 6, 2001. As noted above, this Rule 53(b) continuation application is entered, by Express Mail, on March 2, 2004. Therefore, the '937 application is co-pending as of the filing date of the above-identified application. This continuation application allows for the proper entry of Ermilov, et al., which discloses polyvinylpyrrolidone (PVP) as an inhibitor of free radical oxidation. As noted during prosecution of the '937 application, related U.S. Patent Nos. 6,514,943 and 6,225,289 use PVP in several formulations. Applicants reiterates that activity reported by Ermilov, et al. "slightly inhibited plasmid relaxation" at a PVP concentration of 5%. The '943 patent discloses use of PVP at a 50 fold lower concentration (0.01%), which strongly suggests little if no stabilizing effect from PVP through inhibition of free radical oxidation. As per the Examiner's suggestion in the final Office Action, Applicants have removed reference to the proviso for which is now original claim 10 and new claim 46. In view of entry of this Rule 53(b) continuing application, with this Preliminary Amendment, Applicants respectfully take the position that the §112, first paragraph rejection forwarded in the '937 application is rendered moot. Thus, pending claims 10-19, 21, 23 and 46-61 are in proper form for allowance.

Applicants respectfully note that claims 24-34 and 62-67 were deemed to be drawn to allowable subject matter during prosecution of the '937 application. Applicants present these claims in identical format as held allowable in the parent application. Thus, claims 24-34 and 62-67 are in proper form for allowance.

Applicants have canceled claims 1-9, 20, 22, and 35-45 to mirror the restriction requirement issued in the '937 parent application. Applicants reserve the right to pursue this canceled subject matter in a future continuing application(s).

Claims 10, 12, 16, 17 and 24-34 are amended to more particularly point out and distinctly claim this portion of Applicants invention.

More specifically, claim 10 is amended at element g) to contemplate a stabilized virus formulation which comprises more than one inhibitor of free radical oxidation (e.g., see pending claims 17 and 18). Claim 10 is further amended to correct an editorial oversight [addition of a semi-colon after element (a)].

Claims 12 and 27 are amended to more accurately reflect the pH range of the formulations of the present invention. It is of well within the purview of the skilled artisan to generate stabilized virus formulations with a pH from about 7.0 to about 9.0. Support for this amendment can be found throughout the specification (e.g., see page 8, lines 23-29; Example section 4, including page 27, lines 26-32). Claim 12 is further amended to correct an editorial oversight.

Claims 16 and 24 are amended to more particularly point out and distinctly claim this portion of the invention, namely recitation of various inhibitors of free radical oxidation contemplated for these stabilized virus formulations. Claims 16 and 24 are amended to delete specific reference to the EDTA/ethanol combination, while reciting the possible combination of one or more of these components. Support for amended claims 16 and 24 can be found throughout the specification, including but not limited to reference at page 1, lines 21-25; page 9, lines 23-34; as well as numerous exemplified formulations as disclosed in Example 1.

Claim 17 is amended to correct several editorial oversights, namely deletion of "a" and replacement of a semi-colon with a comma (see line 4 of claim 17 herein).

Claims 24-34 have been amended to recite --adenovirus--, instead of "virus". Support for these amendments are found throughout the entire specification.

Claim 31 is further amended to correct an editorial oversight (see line 5 of amended claim 31 for replacement of a semi-colon with a comma).

New claims 46-67 recite various adenovirus formulations disclosed within the above-identified application, resulting in a set of claims which more particularly point out and distinctly claim this portion of Applicants invention. No new matter is added through entry of new claims 46-67.

Applicants respectfully reiterate that the continuing data for this application, as entered herein, should read as follows:

-- This application is a continuation of U.S. application serial number 09/799,937, filed March 6, 2001, which claims benefit, under 35 U.S.C. §119(e), to U.S. provisional application serial number 60/187,440, filed March 7, 2000. --.

In view of the claims as presented for entry herein, Applicants respectfully take the position that claims 10-19, 21, 23-34 and 46-67 are now in proper form for allowance. The Examiner is invited to contact the undersigned attorney if clarification is required on any aspect of this response, or if any of the claims are considered to require further amendment to be placed in condition for allowance after entry of this Amendment.

Respectfully submitted,

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